IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

FIRST APPEAL NO. 1049 OF 1989.
WITH
CROSS OBJECTION ST. NO. 10604 OF 1990
WITH
CIVIL APPLICATION NO. 4003 OF 2001
AND
FIRST APPEAL NO. 391 OF 1989
WITH
CROSS OBJECTION ST. NO. 14584 OF 1990

The State of Maharashtra
through the Special Land
Acquisition Officer, Metro Centre
No. IV Panvel, Tal.Panvel,
Dist. Raigad ... Appellant
(Org. Opponent.)

Vs.

1. Namdeo Ganu Keni
2. Manohar Ganu Keni
3. Baban Ganu Keni
4. Vasant Ganu Keni
   All Residing at Pethali,
Tal/ Panvel Dist. Raigad. ... Respondents
(orig. Claimants.)

Mr. K.K. Tated, A.G.P. for the State.
Ms. Seema Sarnaik for Respondents 1,3 and 4.
Mr. R.S. Datar for Respondent NO.2.

CORAM : F.I. REBELLO &
ANOOP V.MOHTA, JJ.

DATE : 31ST AUGUST, 2004.

ORAL JUDGMENT (PER F.I. REBELLO,J.)

. First Appeal No.1049/1989 has been preferred by the State against the Judgment and Award dated 29th February, 1988. By the said award the learned reference

Court has fixed the market value of the acquired land at Rs. 8/- per sq. meter. The State Government aggrieved by the said order, has preferred the present appeal.

2. Cross-objection has been filed by the claimants/respondents herein to contend that the market value as fixed by the trial Court is extremely low, considering the material on record, it should be fixed at least at Rs. 25/- per sq. meter. Civil Application No. 4003/2001 is by the respondents praying for apportionment of amounts and interest between respondents interse.

3. First Appeal No.391/1989 is filed again by the State to challenge the award dated 29th February, 1988 whereby also the learned reference Court had fixed compensation at the rate of Rs.8/- per sq. meter. Cross-objection Stamp No.14584/1990 filed by the claimants praying for enhancement of market value at the rate of Rs. 25/- per sq. meter.

4. Considering the controversy involved, the appeals and cross-objections are being disposed of by the common order as the lands are situated in village

Chal, Tal Panvel, District Raigad. The learned reference Court while fixing the market value has relied upon evidence as has been set out in paragraph 6 and 7 of the award of the reference Court. It has come on record that close to the acquired land there is an Industrial Estate functioning since 1973. The work of commencement of Industrial Estate Commenced some time in the year 1965. Various sale instances have been considered in paragraph 7 of the award. Next reference is made to awarding of compensation of lands in Village Taloja in L.A.R. No. 472 of 1986 the compensation is awarded by the Reference Court at the rate of Rs. 15/- per sq. meter. Similarly for lands at Kalamboli compensation was fixed at the rate of Rs. 23/- per sq. meter. In respect of village Pendhar the price of land was fixed at Rs. 12/- per sq. meter and another reference of Village Ambetarkhar it was fixed at the rate of Rs. 15/- per sq. meter. All these lands which were the subject matter of notification dated 3/2/1970. Acquisition of land was for CIDCO.

5. In the meantime from the awards of the reference Court, Civil Appeals came to be filed before this Court in respect of the subject matter of the said

acquisition. In first appeal No.757/2003 and Civil Application No.514/2003 and First Appeal No.1782 of 2002 and Civil Application No. 1078 of 2004, a Division Bench of this Court to which one of us, (F.I.Rebello, J.) was a party by Judgment dated 31st March, 2004, considered earlier Division Bench Judgments, and other tests and acquired lands, based on the distance from the National Highway in terms of the earlier Division Bench award in the judgment deducted the lands were into three categories as under;

(i) Lands situated within 750 meters of the National High way, the market value after deduction was fixed at Rs. 25/- per sq. meter.

(ii) Lands situated between 750 and 1000 meters after deduction the market value was fixed at Rs. 23/- per sq. meter.

(iii) Lands more than 1500 meters, the market value after deduction was fixed at Rs. 21 per sq. meter.

6. In so far as, present acquisition is concerned, the notification were issued on 5th October, 1973.

These lands are situated at village Chal and are at the distance of 3040 sq. meters from Pune Mumbai High Way. Village Pendhar, Taloja and Navdat are close to the acquired land of village Chal, than other lands and therefore, it would be possible to apply the same test but bearing in mind that these lands are at a distance of more than 3kilometers from Poona Mumbai High way.

. The question therefore, is as to what should be the indicator the Court must apply considering the earlier judgments, whereby the price of the land was fixed at Rs. 21/- per sq. meter. There is no doubt that there is M.I.D.C. Estate, in other words there was some development closer to these lands and that should building potential. They cannot however be placed on the same footing as lands in the three categories which we have considered and adverted to earlier. Considering the distance from the Pune Mumbai High way and the fact that the lands are potentially suitable for construction and were in fact acquired for CIDCO and from the evidence of Kulkarni, the expert examined on behalf of the respondents that the lands can be used without doing any filling work the prices can now be determined.

7. Taking into consideration the fact that the lands are at a distance of 3040 meters and more from Pune Mumbai Highway and lands within 500 meters from the Pune Mumbai High way market value after deduction has been fixed at Rs. 25/- per sq. meters, the ends of justice would be met that the market value of acquired lands is fixed at Rs. 12/- per sq. meter as on 3/2/1970.

8. Taking into consideration that notification under Section 4 was issued on 5th October, 1973 we can consider 10% increase on the market value for each year. If that is considered, the market value of the lands can be fixed at Rs. 15/- per sq. meter. Considering the above we think it proper to fix market value of lands in village Chal at Rs. 15/- per sq. meter as on the date of notification issued on 5th October, 1973 which was published on 20th October, 1973.

9. Once having fixed the market value the appeal and corss- objection can now be disposed of.

10. First Appeal No.1049/1989 is dismissed,Cross-Objection Stamp No. 10604/1990 is

partly allowed inasmuch as the market value is increased from Rs. 8/- to Rs. 15/- per sq. meter. The award in the instant case by the reference Court is dated 29th April 1986, The possession of the lands was taken on 22nd February, 1985. the claimants would be entitled to all consequential benefits including compensation under

Section 23(1)(A) of the Land Acquisition Act.

. The appeal along with Cross-objection accordingly disposed off.

11. First Appeal No. 391 of 1989 is dismissed and Cross-Objection Stamp No.14584/1990 is partly allowed inasmuch as market value is enhanced from Rs. 8/- to Rs. 15/- per sq. meter. The award was passed on 29th April 1986, possession of land was taken on 22/2/1985, The respondents/claimants be entitled to all consequential benefits including compensation under Section 23(1)(A) of the Land Acquisition Act.

. The Respondents No.1,3 and 4 had taken out Civil Application No. 4003/2001 for apportionment of the

compensation amongst all the respondents. It will not be possible for this Court to make an order in that matter as that was not the issue before the reference Court. It will be open to the parties to take out whatever proceedings they are entitled to in law before the competent forum or if the parties arrived at settlement amongst themselves, it will be open to file settlement terms before the reference Court which can then make payments to the respondents/claimants based on the said settlement.

. Appeals alongwith cross-objection application disposed of with no order as to costs.

. Parties concerned to act on a simple copy of this order, duly authenticated by the Court Stenographer of this Court.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]